No. 08-1276

In The
Supreme Court of the United States

GLENN HENDERSON,

Petitioner,

vs.

SONY PICTURES ENTERTAINMENT INC.; PAUL, HASTINGS, JANOFSKY & WALKER LLP; HOLLY LAKE; AMY DOW; JAMES ZAPP; BETH BURKE; KIM RUSSO; MELLON BANK AND A MELLON BANK EMPLOYEE NAMED "CONNIE",

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF IN OPPOSITION OF RESPONDENTS SONY PICTURES ENTERTAINMENT INC., BETH BURKE AND KIM RUSSO

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I.

CORPORATE DISCLOSURE STATEMENT UNDER RULE 29.6

Respondent Sony Pictures Entertainment Inc. certifies that it is a wholly owned subsidiary of parent corporation Sony Corporation.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

II.

OPINIONS BELOW

The genesis of this instant Petition for Writ of Certiorari (the "Petition") is the July 21, 2005, Order issued by the United States District Court, Central District of California, granting the Motion to Dismiss of Respondents Sony Pictures Entertainment Inc., Beth Burke and Kim Russo (collectively, "Respondents"). The June 20, 2005, Order dismissed the Complaint filed by Petitioner Glenn Henderson ("Petitioner") on October 19, 2004 (the "2004 Complaint"). A copy of the July 21, 2005, Order is attached to Petitioner's Appendix, at pages 48-61.

On August 1, 2008, The Ninth Circuit Court of Appeals affirmed the District Court's order dismissing the 2004 Complaint. The August 1, 2008, Order affirming the District Court's July 21, 2005, Order is attached to Petitioner's Appendix, at pages 44-47. On January 16, 2009, the Ninth Circuit Court of Appeals denied Petitioner's Petition for Rehearing. The January 16, 2009, Order denying the Petition for Rehearing is attached to Petitioner's Appendix, at page 43.

On April 2, 2009, Petitioner timely filed the instant Petition for Writ of Certiorari.

III.

STATEMENT OF JURISDICTION

The District Court had federal jurisdiction over Petitioner's federal claims pursuant to 28 U.S.C.

§ 1331, and supplemental jurisdiction over Petitioner's state law claims pursuant to 28 U.S.C. § 1367.

The Ninth Circuit had jurisdiction over the Appeal pursuant to 28 U.S.C. § 1291, following the District Court's grant of Respondents' Motion to Dismiss, filed on June 20, 2005.

The United States Supreme Court has jurisdiction over this Petition for Writ of Certiorari pursuant to 28 U.S.C. § 1254.

IV.

STATEMENT OF THE CASE

The instant Petition is but one of a long line of claims and appeals filed by Petitioner against Petitioner's former employer, Respondent Sony Pictures Entertainment Inc. ("SPE") and SPE's agents and employees. Since 2002, Petitioner has filed seven separate and unsuccessful complaints in California state and federal court against SPE and/or its agents and employees, and has appealed each and every ruling issued against him. Indeed, Petitioner was declared a vexatious litigant by the Los Angeles Superior Court on September 19, 2005, and by the federal District Court on February 11, 2009. (Exhibits in Support of Brief in Opposition of Respondents ("RE"), pp. 48, 110.) Pursuant to those Orders, Petitioner is prohibited from pursuing any further litigation against Respondents regarding his employment with SPE without a prior court order.

Petitioner commenced his legal barrage against SPE in June 2002, when, within eight months of his termination, Petitioner filed identical complaints against SPE in state and federal court, alleging claims for age discrimination and retaliation (collectively, the "2002 Complaint"). In or about August 2002, SPE and Petitioner executed their Settlement Agreement, pursuant to which Petitioner released all known and unknown claims against SPE and its agents, and dismissed the 2002 Complaint with prejudice.

Several months after execution of the Settlement Agreement, Petitioner commenced contacting SPE's Chief Executive Officer, John Calley, claiming that SPE had engaged in unspecific financial improprieties, and seeking to reassert claims Petitioner previously made in the 2002 Complaint. Petitioner was referred to SPE's Executive Director of Investigative Services, Raymond Smith ("Smith"), regarding Petitioner's claims of impropriety. Smith invited Petitioner to meet with him to discuss Petitioner's claims, but Petitioner refused to meet with Smith.

Instead, Petitioner, in 2003, again filed suit in federal and state court (collectively, the "2003 Complaint"), alleging numerous and unmeritorious federal and state law claims against SPE, Smith, Calley, and Mary Burke ("Burke") (collectively, the "SPE Defendants"), SPE's then Vice President of Labor Relations. The state court action was removed to federal court and consolidated with Petitioner's federal suit.

The SPE Defendants moved to dismiss the 2003 Complaint pursuant to Rule 12(b)(6) of the *Federal Rules of Civil Procedure*, on the ground that the 2003 Complaint failed to state a cause of action against the SPE Defendants. On April 13, 2004, the District Court granted the motion to dismiss, and dismissed *with prejudice* all of Petitioner's federal and state employment claims. Petitioner appealed this decision to the Ninth Circuit, which affirmed the District Court's ruling in *Henderson v. Sony Pictures Entertainment Inc.*, 135 Fed. Appx. 934, 935 (9th Cir. 2005).

Before the Ninth Circuit affirmed the District Court's ruling regarding the 2003 Complaint, on October 19, 2004, Petitioner filed yet another complaint in federal court against SPE (the "2004 Complaint"). The 2004 Complaint is the subject of Petitioner's current Petition for Writ of Certiorari. In addition to SPE, Petitioner has named as defendants: Beth Burke and Kim Russo (SPE employees) (collectively, "Respondents"); SPE attorneys Paul, Hastings, Janofsky & Walker LLP, Amy Dow, Holly Lake and James Zapp; Mellon Bank and a purported employee of Mellon Bank.

Petitioner's 2004 Complaint presented a litany of muddled allegations and complaints regarding Petitioner's employment with SPE and pled claims for relief that were dismissed with prejudice by the District Court in connection with the 2003 Complaint. As a result, Respondents filed a Rule 12(b)(6) motion to dismiss, which the District Court, Honorable Dean D. Pregerson presiding, granted.

In considering the motion to dismiss, the District Court divided Petitioner's claims in his 2004 Complaint as follows: (1) federal claims[1] that arose prior to the execution of the Settlement Agreement; (2) federal claims duplicative of federal claims made in the 2003 Complaint; (3) federal claims based upon allegations unrelated to the 2003 Complaint; and (4) state law claims. With respect to these four categories of claims, the District Court, on June 20, 2005, held as follows:

(a) All federal claims related to events that occurred prior to Petitioner's and SPE's 2002 settlement were barred pursuant to the terms of the Settlement Agreement.

(b) All federal claims duplicative of the 2003 Complaint were dismissed with prejudice.

(c) Federal claims unrelated to events alleged in the 2003 Complaint were dismissed without prejudice because Petitioner failed to exhaust his administrative remedies.

(d) All remaining state law claims were dismissed without prejudice because all federal claims had been dismissed.

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[1] The District Court construed the allegations in the 2004 Complaint of discrimination, harassment, retaliation, and whistle-blower retaliation as arising under Title VII of the Civil Rights Act of 1964. (Petitioner's Appendix ("PA"), p. 48.)

Petitioner appealed Judge Pregerson's ruling to the Ninth Circuit. On August 1, 2008, the Ninth Circuit affirmed in full the District Court's June 20, 2005, Order. (PA, pp. 44-47.) Petitioner thereafter petitioned the Ninth Circuit for rehearing, which was summarily denied on January 16, 2009. (PA, p. 43.) The instant Petition for Writ of Certiorari was timely filed by Petitioner on April 8, 2009.

Like all of Petitioner's previous claims against SPE, the instant Petition fails to raise any important constitutional questions, fails to raise issues that require a novel interpretation of federal statutes, and does not assert the existence of a conflict among decisions of the state or circuit courts regarding an important constitutional question. Without such a showing, the Petition does not present a suitable case for this Court to grant certiorari. *See*, Rule 10 *United States Supreme Court Rules* (Supreme Court's primary role is to decide important constitutional questions, interpret federal statutes, maintain harmony among the decisions of the Circuit Courts of Appeals and with state court interpretations of federal questions); *Bunting v. Mellen,* 541 U.S. 1019, 1021 (2004) (certiorari denied based on absence of conflict among circuits on constitutionality of supper prayer at state military college).

Although Petitioner apparently argues that certiorari should be granted because his case purportedly raises constitutional issues and/or requires the interpretations of federal statutes, the mere presence of these issues is not enough to grant certiorari.

As this Court has stated, "[i]t is not the habit of the court to decide questions of a constitutional nature unless absolutely necessary to a decision of the case." *Clinton v. Jones*, 520 U.S. 681, 690, fn. 11 (1997). Petitioner has failed to present any facts and/or arguments that even remotely come close to showing that this Court's decision of the purported constitutional and/or federal issues is required.

Petitioner essentially argues that the Ninth Circuit and the District Court improperly decided that the facts of this case warrant dismissal of Petitioner's 2004 Complaint. However, this Court will not grant certiorari simply to correct a perceived error in a lower court decision; achieving justice in a particular case "is ordinarily not a sufficient reason" for granting certiorari. *Ticor Title Ins. Co. v. Brown*, 511 U.S. 117, 122 (1994). Indeed, because the Ninth Circuit's and District Court's decision is based upon facts specific to this case, and is not dependent upon a novel interpretation of a federal statute or constitutional law, certiorari is not an appropriate remedy in this case.

Petitioner makes no new legal arguments why his Petition should be granted, but simply restates his old complaints about the Settlement Agreement and his perceived mistreatment at the hands of Respondents. What is clear is that Petitioner does not have legal grounds for the relief requested herein. Petitioner is unhappy with the Ninth Circuit's and the District Court's rulings, but this does not change the fact that the Ninth Circuit and the District

Court's rulings are legally sound and that no basis exists to grant certiorari herein.

Finally, and quite importantly, Petitioner has had a full and fair opportunity to address his legal grievances against Respondents. Indeed, Petitioner received a more than fair settlement from SPE. Unless Petitioner can show that Respondents have committed new and unrelated wrongs, Petitioner is now prohibited from repeatedly dragging Respondents into court to answer for events long ago settled and dismissed.

For all the reasons stated herein, Respondents respectfully request that this Court deny the instant Petition for Writ of Certiorari.

V.

STATEMENT OF FACTS

On August 31, 1998, Petitioner was hired as a cash allocation clerk by Columbia Pictures Television, Inc., the predecessor-in-interest to SPE. As noted by Petitioner, the terms and conditions of his employment with SPE were governed by a collective bargaining agreement. Also as noted by Petitioner, in or about February 2000, Petitioner executed a Development Plan drafted by SPE, which outlined the steps Petitioner needed to take to improve his performance and prepare Petitioner for future opportunities with SPE. (Petition, p. 13.) On or about December 18, 2000, Petitioner received a written disciplinary

warning advising him that his performance was below SPE's expectations. In accordance therewith, SPE terminated Petitioner on October 18, 2001.

Thereafter, on June 24, 2002, Petitioner filed a complaint against SPE in state court. (RE, p. 1.) On August 5, 2002, Petitioner also filed, but never served, a virtually identical action against SPE in federal court. The June 24, 2002 state court complaint and the August 5, 2002 federal court complaint shall hereinafter be collectively referred to as the "2002 Complaint." In the 2002 Complaint, Petitioner alleged claims for age discrimination and retaliation in violation of the Fair Employment and Housing Act ("FEHA").

Soon after the 2002 Complaint was filed, SPE and Petitioner executed a Settlement Agreement wherein all Petitioner's claims, known and unknown were released and waived. On August 22, 2002, Petitioner caused to be dismissed with prejudice the 2002 Complaint (state and federal cases). (RE, p. 14.)

In or around November 2002, and within three months of entering into the Settlement Agreement, Petitioner contacted John Calley ("Calley"), SPE's then Chief Executive Officer, requesting a meeting. Petitioner purportedly wanted to discuss his termination and Petitioner's belief that employees of SPE were keeping money that did not belong to SPE. Calley referred the matter to Raymond Smith ("Smith"), SPE's then Executive Director of Investigative Services, who contacted Petitioner to investigate

Petitioner's claims. Petitioner did not follow up with Smith, and did not provide any details regarding Petitioner's allegations. SPE did conduct an investigation, and found no improprieties.

A little over a year later, on December 1, 2003, Petitioner filed another complaint against SPE in state court. (RE, p. 24.) The next day, December 2, 2003, Petitioner filed, but did not serve, a federal action containing virtually identical allegations as the state court action against SPE. (RE, p. 30.) The 2003 state and federal complaints shall be collectively referred to as the "2003 Complaint."

The 2003 Complaint named SPE and individual defendants Calley, Smith, and Mary Burke, SPE's Vice President of Labor Relations in 16 different claims for relief. The 16 claims for relief included: civil rights violations; First Amendment violations; discrimination; retaliation; whistle-blower retaliation; conspiracy to take away rights; fraud; harassment; defamation; "insult;" "possible" blackmail or extortion; breach of contract; and "cover up of wrongs." (RE, pp. 26, 30.)

The state court action was removed to federal court, where it was consolidated with the federal action. Pursuant to the defendants' motion to dismiss brought under Rule 12(b)(6) of the *Federal Rules of Civil Procedure*, the District Court dismissed with prejudice all of Petitioner's federal claims and state court claims under FEHA. The Ninth Circuit Court of Appeals affirmed the District Court's ruling in full.

Henderson v. Sony Pictures Entertainment Inc., 135 Fed. Appx. 934, 935 (9th Cir. 2005).

With the 2003 Complaint still pending before the Ninth Circuit, Petitioner struck again and filed another complaint in District Court against Respondents herein, Mellon Bank and other individuals. (RE, p. 36.) The federal action was filed on October 21, 2004 (the "2004 Complaint") and contained much the same facts, claims and causes of action as those alleged in the 2002 and 2003 Complaints.

The 2004 Complaint, like the instant Petition, was difficult to interpret, but purported to state claims for, among other things: discrimination; harassment; fraud; defamation; whistle-blower retaliation; wrongful termination; conspiracy; whistle-blower termination; duress; breach of contract; failure to give a good reference; unfair practices in denying workers' compensation benefits; and intentional infliction of emotional distress. (RE, p. 36.)

Respondents moved under Rule 12(b)(6) to dismiss the 2004 Complaint. Construing Respondents' 12(b)(6) motion, the District Court placed Petitioner's claims in four different categories, based on the nature of the factual allegations stated by Petitioner: (1) federal claims relating to the Settlement Agreement; (2) federal claims that were duplicative of the 2003 Complaint; (3) federal claims based upon allegations unrelated to the 2003 Complaint; and (4) all remaining pendent state law claims. On June 20, 2005, the District Court, Honorable Dean D.

Pregerson presiding, granted the motion to dismiss. (PA, pp. 48-61.)

The District Court dismissed the first category of claims because they were barred by the terms of the Settlement Agreement. The second category of claims were also dismissed, with prejudice, as those claims were duplicative of the claims of the 2003 Complaint, which had been litigated and decided. The District Court dismissed the third category of claims (those alleged in the 2004 Complaint) without prejudice, as Petitioner failed to first exhaust his administrative remedies. Finally, after dismissing all of Petitioner's federal claims, the District Court properly exercised its discretion under 28 U.S.C. § 1367(c)(3) and dismissed Petitioner's state law claims as well.

Undeterred, and while the 2003 and 2004 Complaints were pending, Petitioner filed yet another complaint against Respondents herein, among others. In his May 3, 2005 complaint (the "2005 Complaint"), Petitioner yet again alleged the same claims, including, but not limited to, harassment; defamation; "threat and harassment about a First Amendment issue;" denial of workers' compensation benefits; lack of promotion opportunity; failure to give a good reference; breach of contract; whistle-blower retaliation; fraud; conspiracy, etc.

In response thereto, Respondents herein filed a demurrer and motion to determine Petitioner a vexatious litigant. On September 19, 2005, the state court granted Respondents' motion determining

Petitioner to be a vexatious litigant, and required Petitioner to provide security to proceed with the 2005 Complaint. After Petitioner failed to post the security, the state court dismissed Petitioner's 2005 Complaint against Respondents herein. (RE, p. 48.)

Undaunted, on November 27, 2007, Petitioner again filed a complaint in federal court asserting various civil and criminal claims against Respondents (the "2007 Complaint"). The 2007 Complaint was amended in 2008. (RE, p. 52.) Petitioner alleged, among other things, claims for RICO violations; Collective Bargaining Agreement violations; stalking; extortion; discrimination; torture; threats, etc.

Respondents filed a motion seeking to dismiss with prejudice the 2007 Complaint, and for an order determining Petitioner to be a vexatious litigant. On February 11, 2009, the District Court, Honorable Otis D. Wright II presiding, granted Respondents' motion, dismissed the 2007 Complaint and determined Petitioner to be a vexatious litigant. (RE, p. 110.)

VI.

REASONS FOR DENYING THE WRIT

A. Petitioner's Federal Claims Were Improper As A Matter Of Law And The Ninth Circuit Properly Affirmed The District Court's Ruling.

The instant Petition must be denied as the decisions below were correct as a matter of law, and were based upon the specific facts of this case.

The District Court liberally construed the allegations contained in the 2004 Complaint of discrimination, harassment, retaliation, and whistle-blower retaliation as arising under Title VII of the Civil Rights Act of 1964, and labeled these claims Petitioner's federal claims. (PA, p. 53.) The Ninth Circuit agreed with the District Court's interpretation of the allegations contained in the 2004 Complaint. (PA, p. 45.)

As interpreted by the District Court, Petitioner alleged three categories of federal claims for relief against Respondents: (1) federal claims that accrued pre-Settlement Agreement and which were related to Petitioner's employment with SPE (PA, pp. 53-56); (2) federal claims duplicative of the federal claims made in the 2003 Complaint (PA, pp. 56-57); and (3) Petitioner's federal claim of retaliation, which was based upon events that occurred after the events alleged in the 2003 Complaint[2] (PA, pp. 57-59.) The Ninth Circuit properly affirmed the District Court's dismissal of each of these categories of claims.

1. Petitioner's Pre-Settlement Federal Claims Are Barred Because All Known And Unknown Claims Were Waived By Petitioner's 2002 Release.

In affirming the District Court's dismissal of all pre-Settlement Agreement federal claims, the Ninth

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[2] Petitioner's 2004 Complaint claimed that SPE allegedly continued to interfere with Petitioner's employment search by refusing to give Petitioner a positive reference. (PA, p. 57.)

Circuit recognized the long held rule that a party who releases claims as part of a settlement is barred from relitigating such claims. *Pardi v. Kaiser Found. Hosp.*, 389 F.3d 840, 848 (9th Cir. 2004); *see also, Sec. People, Inc. v. Medeco Sec. Locks, Inc.*, 59 F.Supp.2d 1040, 1041-1042 (N.D. Cal. 1999) (where settlement agreement between the parties included language that plaintiff released all claims against defendant which were, or could have been, alleged in the first case, subsequent claims that could have been alleged in the first case were barred); *Winet v. Price,* 4 Cal.App.4th 1159, 1166-1168 (1992) (general release in which parties declared their intention to release each other from all claims, known or unknown, suspected or unsuspected, arising from either facts described in underlying lawsuit or any act or omission in connection with legal services that attorney rendered to former client, and reinforcing such release by specifically referring to and waiving benefits of provisions of California *Civil Code* § 1542, could not be avoided based on client releasor's alleged subjective intention not to release attorney from all possible future claims).

Here, it cannot be disputed that Petitioner released all known and unknown federal claims, as defined by the District Court, asserted in the 2004 Complaint by way of paragraph 7 of the Settlement Agreement. Paragraph 7 of the Settlement Agreement states, in pertinent part:

> 7. Complete Release of All Claims Known or Unknown. As a material inducement to

the [SPE] to enter into this Agreement, [Petitioner] hereby irrevocably and unconditionally releases, acquits and forever discharges [SPE] and each of [SPE's] owners, shareholders, predecessors, successors, assigns, agents, directors, officers, employees, representatives, attorneys, divisions, subsidiaries, affiliated (and agents, directors, officers, employees, representatives and attorneys of such divisions, subsidiaries and affiliates), and all persons acting by, though, or in concert with any of them (collectively "Releasees") and each of them, from any and all charges, grievances, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, expenses (including attorneys' fees and costs actually incurred), of any nature whatsoever, known or unknown ("Claim" or "Claims"), which [Petitioner] now has, owns or holds, or claims to have, own or hold, or which [Petitioner] at any time up to and through the date of this Agreement had, owned, or held, or claimed to have, own or hold against any of the Releasees, specifically including but not limited to any Claims under Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, the Family and Medical Leave Act, the Age Discrimination in Employment Act, the National Labor Relations Act, the California Fair Employment and Housing Act, the California Family Rights Act, the California Labor Code, or any other statute or law

> prohibiting discrimination in employment, and any Claims arising in any way out of [Petitioner's] employment with [SPE] or termination thereof, including but not limited to all claims based on contract, collective bargaining agreement, common law and/or statute.

(PA, pp. 53-55.)

Petitioner recognizes that none of the federal claims that he alleges in his 2004 Complaint arose before and/or through the date of the Settlement Agreement survived this release. Rather, although unclear, it appears that Petitioner claims that the Settlement Agreement should be void because Petitioner signed it under "duress." Petitioner claims that he was "severely depressed," had a "severe anxiety disorder" and/or "post traumatic stress disorder," thereby making him unable to assent to the terms of the Settlement Agreement. (Petition, p. 20.)

However, neither Petitioner's depression nor his anxiety constitutes "duress." A claim for duress must be based on a wrongful act that was sufficiently coercive to cause a reasonably prudent person faced with no reasonable alternative to succumb to pressure. *Rich & Whillock, Inc. v. Ashton Dev., Inc.*, 157 Cal.App.3d 1154, 1158 (1984).

Nowhere in the instant Petition, nor in any of Petitioners' numerous previously filed briefs, does Petitioner state, plead or argue that Respondents engaged in any wrongful act to coerce him to execute

the Settlement Agreement. Petitioner relies solely on his allegations of depression and anxiety. (Petition, p. 20.) Petitioner did not refer to any legal authorities in any of the proceedings below supporting the position that his release of all claims in the Settlement Agreement is unenforceable due to Petitioner's depression, anxiety or alleged post traumatic stress disorder. Nor could Petitioner do so, as no such authority exists.

Indeed, the governing authorities are to the contrary. *Johnson v. Int'l Bus. Mach. Corp.,* 891 F.Supp. 522, 531 (N.D. Cal. 1995) (a "mere weakness of spirit" caused by dismay at losing one's job or frustration in believing one has been discriminated against is not legally sufficient for the rescission of a settlement agreement). As noted by the Ninth Circuit, Petitioner failed to raise any facts that the Settlement Agreement was procured by fraud, duress, or any other reason that would render it invalid. *See Morta v. Korea Insurance Corp.,* 840 F.2d 1452, 1466-1467 (9th Cir. 1988) (upholding settlement agreement where record showed no legally sufficient reason to rescind the agreement). (Appendix, p. 45.) Thus, the Ninth Circuit and the District Court properly held that Petitioner's release of all claims in the Settlement Agreement is enforceable and that all of Petitioner's pre-Settlement Agreement claims fail as a matter of law. There is no basis for granting the instant Petition with respect to the first category of claims dismissed by the District Court and affirmed by the Ninth Circuit.

2. Petitioner's Federal Claims Were Properly Dismissed As Duplicative Of The 2003 Complaint.

The District Court properly held, and the Ninth Circuit properly affirmed, that, to the extent Petitioner's federal claims were based upon alleged events addressed in the 2003 Complaint (which covered the time period between the Settlement Agreement and the 2003 Complaint), these claims are barred as duplicative of claims already finally decided and dismissed *with prejudice* by this Court. When the 2004 Complaint was filed, the 2003 Complaint was still pending on appeal. Fearing that the Ninth Circuit would affirm the District Court's decision, which it eventually did, Petitioner tried to circumvent the process by filing a duplicative pleading in the District Court. *See Henderson v. Sony Pictures Entertainment Inc.*, 135 Fed. Appx. at 935 (affirming the District Court's dismissal of the 2003 Complaint).

A litigant has no right to maintain two actions on the same issues in the same or different court against the same defendants at the same time. *See Zerilli v. Evening News Ass'n*, 628 F.2d 217, 222 (D.C. Cir. 1980); *Ridge Gold Standard Liquors, Inc. v. Joseph E. Seagram & Sons, Inc.*, 572 F.Supp. 1210, 1213 (N.D. Ill. 1983) (a federal suit may be dismissed "for reasons of wise judicial administration . . . whenever it is duplicative of a parallel action already pending in another . . . court.").

Indeed, District Courts are accorded a "great deal of latitude and discretion" in determining whether one action is duplicative of another. Generally, a suit is duplicative if the "claims parties, and available relief do not significantly differ between the two actions." *Serlin v. Arthur Andersen & Co.*, 3 F.3d 221, 223 (7th Cir. 1993). Courts faced with duplicative pleadings do not abuse their discretion by dismissing the duplicative pleading. *Zerilli*, 628 F.2d at 222; *Walton v. Eaton Corp.*, 563 F.2d 66, 70 (3d Cir. 1977).

In the 2003 Complaint, Petitioner pled claims for: civil rights violations; First Amendment violations; "conspiracy to take away rights;" discrimination; retaliation; whistle-blower retaliation; harassment; fraud; defamation; "insult;" Freedom of Information Act violations; threats; "possible" blackmail or extortion; breach of contract; and "cover up of wrongs." (PA, p. 49.) In his 2004 Complaint, Petitioner pled claims for: discrimination; harassment; retaliation; whistle-blower retaliation; breach of contract; fraud; defamation; unfair business practices in denying workers' compensation benefits; "failure to give a good reference" and conspiracy. (PA, p. 51.)

Throughout the 2004 Complaint, Petitioner asserted the same grievances about the same employment-related issues Petitioner litigated in the 2002 Complaint *and* the 2003 Complaint. Petitioner's allegations center around his termination, Respondents' purported employment retaliation, harassment and discrimination, and concerns regarding jury duty while he was employed at SPE.

To the extent that Petitioner was trying to circumvent the process, avoid the eventual ruling by the Ninth Circuit, and plead duplicative claims, he was not permitted to do so. Thus, the Ninth Circuit held that the District Court did not abuse its discretion when it dismissed Petitioner's duplicative claims. (PA, pp. 45-46.) *See also, Adams v. Cal. Dept. of Health Servs.*, 487 F.3d 684, 688 (9th Cir. 2007) (District Court did not abuse its discretion by dismissing a duplicative action).

The legal precedent relied upon by the Ninth Circuit has not changed, and certiorari should not be granted herein.

3. Petitioner's Federal Claim That Accrued After His 2003 Complaint Was Properly Dismissed Because Petitioner Failed To Exhaust His Administrative Remedies.

The District Court construed the allegations of the 2004 Complaint wherein Respondents purportedly interfered with Petitioner's employment prospects by failing to give him a positive recommendation (after the 2003 Complaint) as an attempt to state a Title VII claim. (PA, p. 57.)

The District Court further held, and the Ninth Circuit affirmed, that Petitioner's purported Title VII claim failed as a matter of law because Petitioner failed to exhaust his administrative remedies. (PA, pp. 58-59.) The filing of an administrative charge is a

jurisdictional prerequisite to bringing a civil action under Title VII. *United Air Lines, Inc. v. Evans,* 431 U.S. 553, 558 (1977) ("A discriminatory act which is not made the basis for a timely charge is . . . merely an unfortunate event in history which has no present legal consequences."); *Martin v. Lockheed Missiles & Space Co.,* 29 Cal.App.4th 1718, 1724 (1994).

A charge of discrimination must be filed with the Equal Employment Opportunity Commission ("EEOC") *within 180 days* of the claimed discriminatory act in order to be actionable. *See* 42 U.S.C. § 2000e-5.

Petitioner does not now, nor did he in his 2004 Complaint, allege that he exhausted his administrative remedies as to any of the Respondents with respect to any of the claims made therein. (PA, p. 51.) The Ninth Circuit, therefore, properly affirmed the District Court's ruling, stating that Petitioner's failure to exhaust his administrative remedies warranted dismissal of the post-2003 Complaint federal claim made by Petitioner. (PA, p. 46.) *Stache v. Int'l Union of Bricklayers & Allied Craftsmen, AFL-CIO,* 852 F.2d 1231, 1233 (9th Cir. 1988). Certiorari should not be granted.

B. The Doctrines Of Res Judicata And Collateral Estoppel Also Bar Petitioner's Claims.

The Ninth Circuit's affirmance of the District Court's dismissal of the 2004 Complaint finds support under the doctrines of res judicata and collateral

estoppel, as the 2004 Complaint is simply an attempt to relitigate the issues that were either raised, or should have been raised, in the 2002 and/or 2003 Complaints. A final judgment was entered as to Petitioner's federal claims and state law employment claims in the 2003 Complaint; accordingly, the 2004 Complaint is barred by the doctrines of res judicata (claim preclusion) and collateral estoppel (issue preclusion).

Under the doctrine of res judicata, a valid, final judgment on the merits precludes parties or parties in privity with them from relitigating the same "cause of action" in a subsequent suit. *Mycogen Corp. v. Monsanto Co.,* 28 Cal.4th 888, 896 (2002); *Slater v. Blackwood,* 15 Cal.3d 791, 795 (1975). Res judicata provides that a judgment, if rendered on its merits, is an absolute bar to a subsequent action, not only as to every matter which was presented in the first action, but as to any other matter that might have been asserted. *L.A. Unified Sch. Dist. v. L.A. Branch NAACP,* 714 F.2d 935, 940 (9th Cir. 1983); *see also Owens v. Kaiser Found. Health Plan, Inc.,* 244 F.3d 708, 713 (9th Cir. 2001) ("Res Judicata, also known as claim preclusion, bars litigation in a subsequent action of any claims that were raised or could have been raised in the prior action."); *Littlejohn v. U.S.,* 321 F.3d 915, 919-20 (9th Cir. 2003) (claim preclusion "prevents the relitigation of claims previously tried and decided").

In determining whether or not two claims are the same for purposes of res judicata, this court

considers: whether rights or interests established in the prior judgment would be destroyed or impaired by the prosecution of the second action; whether substantially the same evidence is presented in the two actions; whether the two suits involve infringement of the same right; and whether the two suits arise out of the same transactional nucleus of facts. *Int'l Union of Operating Eng'rs-Employers Const. Indus. Pension, Welfare & Training Trust Funds v. Karr,* 994 F.2d 1426, 1429 (9th Cir. 1993), *citing, Costantini v. Trans World Airlines,* 681 F.2d 1199, 1201-02 (9th Cir. 1982). The last of these criteria is the most important, and this court has applied claim preclusion without even reaching the other factors listed above. *Int'l Union of Operating Eng'rs,* 994 F.2d at 1430.

Collateral estoppel, or issue preclusion, precludes relitigation of issues argued and decided in prior proceedings. *Mycogen,* 28 Cal.4th at 896. Like res judicata, the doctrine applies if the decision in the initial proceeding was final and on the merits. *Le Parc Cmty. Ass'n v. Workers' Comp. Appeals Bd.,* 110 Cal.App.4th 1161, 1171 (2003). The principles of collateral estoppel mandate that a former judgment "is conclusive on issues actually litigated between the parties in the former action." *Interinsurance Exch. of the Auto. Club v. Superior Court,* 209 Cal.App.3d 177, 181 (1989) (citations omitted).

California courts broadly interpret what constitutes an issue for purposes of collateral estoppel. For example, in determining what constitutes an "issue" subject to collateral estoppel, the court of appeal in

Interinsurance Exchange held barred any matter that was *actually raised* or related and/or relevant to the scope of the action so that it *could have been raised. Id.* at 182, *citing, Sutphin v. Speik,* 15 Cal.2d 195, 202 (1940). Thus, the court in *Interinsurance Exchange* barred subsequent legal theories based on the same factual background:

> We conclude that as a result of the final adjudication of the issue of the effectiveness of [plaintiff]'s assent to the release based on a factual background in which [plaintiff] could have urged theories of fraud and overreaching as bases for vitiating her assent, [plaintiff] is precluded from asserting her cause of action for breach of the covenant of good faith and fair dealing based on the same factual background. The finally adjudicated effective assent under these circumstances of factual background identity and opportunity to assert fraud and overreaching forecloses a "bad faith" action.

Interinsurance Exchange, 209 Cal.App.3d at 183 (sustaining defendant's demurrer without leave to amend and dismissing the action).

Under the federal rule, "a final judgment maintains its preclusive effect despite pendency of an appeal." *Home Diagnostics Inc. v. LifeScan Inc.,* 120 F.Supp.2d 864, 867 n.1 (N.D. Cal. 2000), *citing*, *Pharmacia & Upjohn Co. v. Mylan Pharms., Inc.,* 170 F.3d 1373, 1381 (Fed. Cir. 1999); *Huron Holding Corp. v. Lincoln Mine Operating Co.,* 312 U.S. 183, 188-89

(1941) (under the federal rule, the pendency of an appeal does not suspend the operation of an otherwise final judgment for purposes of res judicata or collateral estoppel).

With the exception of Petitioner's allegations against SPE's outside counsel, and his purported Title VII claim that accrued after the 2003 Complaint, Appellant's entire 2004 Complaint arises out of the same transactional nucleus of facts – Petitioner's employment and his communications with SPE subsequent to his employment. A final judgment, by way of dismissal of Petitioner's 2002 Complaint and 2003 Complaint, has been entered as to these claims. Thus, Petitioner has already litigated, or has had the opportunity to litigate, the majority of the claims at issue in the 2004 Complaint:

- Harassment – Actually litigated in the 2002 and 2003 Complaints;
- Discrimination – Actually litigated in the 2002 and 2003 Complaints;
- Retaliation – Actually litigated in the 2002 and 2003 Complaints;
- Fraud – Actually litigated in the 2002 and 2003 Complaints;
- Defamation – Actually litigated in the 2002 and 2003 Complaints;
- Breach of Contract – Actually litigated in the 2002 and 2003 Complaints;

- Conspiracy – Actually litigated in the 2002 and 2003 Complaints;
- Issues related to settlement of the 2002 Complaint – Could have been litigated in either the 2003 or 2004 Complaint;
- Denial of workers' compensation benefits – Could have been litigated in either the 2003 or 2004 Complaint.

While the District Court did not exercise its discretion to grant Respondents' motion to dismiss on these grounds, this Court may consider the doctrines of res judicata and collateral estoppel in deciding to affirm the District Court's dismissal of the 2004 Complaint, and the Ninth Circuit's affirmance of that decision.

C. The District Court Properly Exercised Its Discretion To Dismiss Petitioner's Remaining State Law Claims.

A District Court has the discretion to exercise supplemental jurisdiction over state law claims that arise out of the same facts and circumstances as the federal claims. 28 U.S.C. § 1367(c)(3). When a District Court has disposed of all federal claims well before trial, the District Court may exercise its discretion to dismiss pendent state law claims without prejudice. *Id.* This is precisely what the District Court did here. Since the District Court properly acted within its discretion, its order dismissing the remaining state law claims without prejudice was affirmed by the

Ninth Circuit. (PA, p. 46.) *See Herman Family Revocable Trust v. Teddy Bear,* 254 F.3d 802, 806 (9th Cir. 2001) (after a District Court dismisses on the merits federal claims over which it had original jurisdiction, the District Court may decline to exercise supplemental jurisdiction over remaining state claims); 28 U.S.C. § 1367(c)(3). Accordingly, certiorari should not be granted to revisit the District Court's dismissal of Petitioner's state law claims.

VII.

CONCLUSION

For the foregoing reasons, Respondents Sony Pictures Entertainment Inc., Beth Burke and Kim Russo respectfully request that this Court deny Petitioner Glenn Henderson's Petition for Writ of Certiorari.

Respectfully submitted,

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